

Message Text

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TO AMEMBASSY LONDON
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C O N F I D E N T I A L STATE 110606

E.O. 11652: GDS
TAGS: PFOR, EG, CY, UK, US
SUBJECT: NIMBUS STAR

REFS: (A) LONDON 6156, (B) STATE 73325, (C) STATE 98125

1. REF A REPORTS VIEW OF HMG THAT LEGAL RELATIONSHIP
BETWEEN US AND UK WITH RESPECT TO POSSIBLE CLAIMS AGAINST
EACH OTHER SHOULD BE GOVERNED BY NATO SOFA ON CYPRUS SBA'S
AND RESPECTIVE BILATERAL AGREEMENTS WITH GOE ON "EGYPTIAN
END OF OPERATION." WE DO NOT BELIEVE THIS APPROACH
DESIRABLE. EVEN AFTER BOTH GOVERNMENTS HAVE CONCLUDED
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AGREEMENTS WITH GOE, WHICH MAY STILL TAKE SOME TIME, THOSE

AGREEMENTS WILL AT BEST PROVIDE FOR GOE LIABILITY WITH RESPECT TO THIRD PARTY CLAIMS AND AT WORST MAKE NO PROVISION WHICH WOULD COVER CLAIM BETWEEN USG AND HMG. WE BELIEVE IT WOULD BE INCONSISTENT WITH NATURE OF COOPERATIVE US-UK ASSISTANCE TO EGYPT IN CLEARANCE OF CANAL FOR EITHER GOVERNMENT TO LOOK TO GOE FOR SATISFACTION OF CLAIMS AGAINST THE OTHER. WE CONSIDER MUTUAL WAIVER OF CLAIMS APPROPRIATE IN LIGHT OF NATURE OF PROJECT.

2. MUTUAL WAIVER CAN BE ACHIEVED BY EITHER OF TWO PROCEDURES:

A. APPLICATION OF NATO SOFA CAN BE LIMITED TO CYPRUS END OF OPERATION AND US/UK CLAIMS RELATIONSHIP IN OTHER AREAS

OF OPERATION COVERED BY BILATERAL AGREEMENTS REFERRED TO IN PARAS 2(2) AND 2(3) OF REF B.

B. USG AND HMG CAN AGREE TO APPLY NATO SOFA TO ENTIRE OPERATION PER REF C. PRACTICAL EFFECT WOULD BE THAT WAIVER OF CLAIMS IN ART VIII OF SOFA WOULD APPLY TO CLAIMS ARISING ANYWHERE IN COURSE OF OPERATION (UNLIKE MOST OTHER PROVISIONS OF SOFA, OPERATION OF THIS PROVISION NOT LIMITED TO TERRITORY OF RECEIVING STATE).

3. WE PREFER SOLUTION B ABOVE BUT ARE PREPARED TO HANDLE MATTER EITHER WAY. HOWEVER, IN ABSENCE OF AGREEMENT BY HMG THAT NATO SOFA WILL APPLY TO ENTIRE OPERATION, WE WILL CONSIDER THAT BILATERAL AGREEMENTS WILL GOVERN OUTSIDE SBA'S. YOU SHOULD SO INFORM FCO.

4. AS TO QUESTION OF CRIMINAL JURISDICTION (PARA 2 REF A), 1952 VISITING FORCES ACT DOES NOT CHARACTERIZE UK COURTS AS CIVIL OR SERVICE COURTS, ALTHOUGH THE COURTS OF THE VISITING FORCES ARE CHARACTERIZED AS SERVICE COURTS. AS NOTED REF C, UK COURTS-MARTIAL JURISDICTION OVER US PERSONNEL IS UNACCEPTABLE. ASSUMING REF A REFERENCE TO UK SERVICE COURTS IS IN ERROR AND THAT CIVIL COURTS WOULD EXERCISE JURISDICTION ON SBA'S, DEPT AND DOD WOULD NOT OBJECT TO APPLICATION OF NATO SOFA ARTICLES WITH CONFIDENTIAL

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SUBSTITUTION OF VISITING FORCES ACT FOR ARTICLE VII, NATO SOFA, ALTHOUGH IT IS OUR PREFERENCE TO APPLY NATO SOFA ACROSS THE BOARD. RUSH

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